

Introduced by Senator Morrow

February 23, 1999

An act to amend Sections 17200, 17204 and 17535 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 593, as introduced, Morrow. Unfair competition.

Existing law prohibits unfair competition and certain unlawful, unfair, or fraudulent business acts or practices, and authorizes actions for relief to be brought by the Attorney General, a district attorney, a county counsel, a city attorney, or on the complaint of any board, officer, person, corporation, or association, or by any person acting for the interests of itself, its members, or on behalf of the general public. These provisions provide for various remedies, including injunctive relief, restitution, and civil penalties.

This bill would:

(1) Require a person bringing an action under these provisions solely on his or her own behalf to have been harmed or threatened with some harm by the unlawful acts or practices.

(2) Require a person acting for the interests of its members to prove that some or all of the members were harmed or threatened with some harm, and if restitution is sought, require the person to comply with certain provisions governing class actions.

(3) Require a private person who brings an action under these provisions on behalf of the general public to have been harmed or threatened with some harm, be an adequate

representative of the interests of the general public, have an attorney who will adequately represent the interests of the general public, and have claims or defenses typical of the claims or defenses of the general public, as determined by the court.

(4) Require court approval following a hearing in order for an action brought under (3) to be dismissed or compromised, as specified, and provide that a judgment approved by the court in that regard is conclusive and would bar any further similar representative actions against the same defendant based on substantially similar facts and theories of liability.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17200 of the Business and
2 Professions Code is amended to read:

3 17200. As used in this chapter, unfair competition
4 shall mean and include any unlawful, *and* unfair or
5 fraudulent business act or practice and unfair, deceptive,
6 untrue, or misleading advertising and any act prohibited
7 by Chapter 1 (commencing with Section 17500) of Part
8 3 of Division 7 of the Business and Professions Code.

9 SEC. 2. Section 17204 of the Business and Professions
10 Code is amended to read:

11 17204. (a) Actions for any relief pursuant to this
12 chapter shall be prosecuted exclusively in a court of
13 competent jurisdiction by the Attorney General or any
14 district attorney or by any county counsel authorized by
15 agreement with the district attorney in actions involving
16 violation of a county ordinance, or any city attorney of a
17 city, or city and county, having a population in excess of
18 750,000, and, with the consent of the district attorney, by
19 a city prosecutor in any city having a full-time city
20 prosecutor or, with the consent of the district attorney, by
21 a city attorney in any city and county in the name of the
22 people of the State of California upon their own
23 complaint or upon the complaint of any board, officer,
24 person, corporation or association or by any person acting

1 for the interests of itself, its members, or the general
2 public.

3 *(b) Any person bringing an action for relief pursuant*
4 *to this chapter solely on his or her own behalf shall have*
5 *been harmed or threatened with some harm by the acts*
6 *or practices prohibited by this chapter in order to*
7 *maintain the action.*

8 *(c) Any person acting for the interests of its members*
9 *who brings an action for relief pursuant to this chapter*
10 *shall prove that some or all of its members have been*
11 *harmed or threatened with some harm by the acts or*
12 *practices prohibited by this chapter, and if restitution for*
13 *its members is sought, shall satisfy the requirements of*
14 *Section 382 of the Code of Civil Procedure.*

15 *(d) Any private person who brings an action for any*
16 *relief pursuant to this chapter on behalf of the general*
17 *public shall have been harmed or threatened with some*
18 *harm by the acts or practices prohibited by this chapter,*
19 *shall be an adequate representative of the interests of the*
20 *general public, shall have retained an attorney who will*
21 *adequately represent the interest of the general public,*
22 *and shall have claims or defenses typical of the claims or*
23 *defenses of the general public. As soon as practical after*
24 *the commencement of an action on behalf of the general*
25 *public, the court shall determine by order whether the*
26 *action may be maintained.*

27 *(e) Any action authorized by the court to be brought*
28 *by a private person acting on behalf of the general public*
29 *may not be dismissed or compromised without the*
30 *approval of the court, following a hearing in which the*
31 *court finds that the proposed judgment or dismissal of the*
32 *action is fair, reasonable, and adequate to protect the*
33 *interests of the general public. Notice of the proposed*
34 *demand or compromise shall be given as the court*
35 *directs. The determination of an action brought by a*
36 *person acting on behalf of the general public pursuant to*
37 *a judgment approved by the court is conclusive and bars*
38 *any further actions brought by private persons on behalf*
39 *of the general public against the same defendant based on*
40 *substantially similar facts and theories of liability.*

1 (f) *Nothing in this section shall preclude a person from*
2 *bringing a class action for relief pursuant to this chapter*
3 *if the requirements of Section 382 of the Code of Civil*
4 *Procedure are satisfied.*

5 SEC. 3. Section 17535 of the Business and Professions
6 Code is amended to read:

7 17535. (a) Any person, corporation, firm,
8 partnership, joint stock company, or any other association
9 or organization ~~which~~ *that* violates or proposes to violate
10 this chapter may be enjoined by any court of competent
11 jurisdiction. The court may make such orders or
12 judgments, including the appointment of a receiver, as
13 may be necessary to prevent the use or employment by
14 any person, corporation, firm, partnership, joint stock
15 company, or any other association or organization of any
16 practices ~~which~~ *that* violate this chapter, or ~~which~~ *that*
17 may be necessary to restore to any person in interest any
18 money or property, real or personal, which may have
19 been acquired by means of any practice in this chapter
20 declared to be unlawful.

21 (b) Actions for injunction under this section may be
22 prosecuted by the Attorney General or any district
23 attorney, county counsel, city attorney, or city prosecutor
24 in this state in the name of the people of the State of
25 California upon their own complaint or upon the
26 complaint of any board, officer, person, corporation or
27 association or by any person acting for the interests of
28 itself, its members, or the general public.

29 (c) *Any person bringing an action for relief pursuant*
30 *to this chapter solely on his or her own behalf shall have*
31 *been harmed or threatened with some harm by the acts*
32 *or practices prohibited by this chapter in order to*
33 *maintain the action.*

34 (d) *Any person acting for the interests of its members*
35 *who brings an action for relief pursuant to this chapter*
36 *shall prove that some or all of its members have been*
37 *harmed or threatened with some harm by the acts or*
38 *practices prohibited by this chapter, and if restitution for*
39 *its members is sought, shall satisfy the requirements of*
40 *Section 382 of the Code of Civil Procedure.*



1 (e) Any private person who brings an action for any
2 relief pursuant to this chapter on behalf of the general
3 public shall have been harmed or threatened with some
4 harm by the acts or practices prohibited by this chapter,
5 shall be an adequate representative of the interests of the
6 general public, shall have retained an attorney who will
7 adequately represent the interest of the general public,
8 and shall have claims or defenses typical of the claims or
9 defenses of the general public. As soon as practical after
10 the commencement of an action on behalf of the general
11 public, the court shall determine by order whether the
12 action may be maintained.

13 (f) Any action authorized by the court to be brought
14 by a private person acting on behalf of the general public
15 may not be dismissed or compromised without the
16 approval of the court, following a hearing in which the
17 court finds that the proposed judgment or dismissal of the
18 action is fair, reasonable, and adequate to protect the
19 interests of the general public. Notice of the proposed
20 demand or compromise shall be given as the court
21 directs. The determination of an action brought by a
22 person acting on behalf of the general public pursuant to
23 a judgment approved by the court is conclusive and bars
24 any further actions brought by private persons on behalf
25 of the general public against the same defendant based on
26 substantially similar facts and theories of liability.

27 (g) Nothing in this section shall preclude a person
28 from bringing a class action for relief pursuant to this
29 chapter if the requirements of Section 382 of the Code of
30 Civil Procedure are satisfied.